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No. 82-17

# In the Supreme Court of the United States

OCTOBER TERM, 1982

JOSEPH M. COUCH, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
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Petitioner contends that his extended detention at the border after entering the United States was in effect an arrest requiring probable cause.

In an indictment returned in the United States District Court for the Central District of California, petitioner was charged with importing cocaine, in violation of 21 U.S.C. 952(a) and 960(a)(1), and possessing cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). Following an evidentiary hearing, the district court ruled that petitioner had been detained by Customs officers for an unreasonable period of time at the Los Angeles International Airport, after a non-stop flight from Lima, Peru, while a court order was sought. It also ruled that the court order, authorizing x-rays of petitioner by a doctor at a local hospital, was unreasonable and was supported by an insufficient affidavit. The district court thereupon suppressed all

evidence obtained from the detention, including the x-rays and cocaine excreted from petitioner's body. The court of appeals reversed (Pet. App. A1-A19).

Petitioner contends (Pet. 4-9) that probable cause is needed to justify a prolonged detention at the border of a traveler coming into the United States. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to dismiss. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
*Solicitor General*

JULY 1982

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[1]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

DOJ-1982-07